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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Establishment of a Class A	)	MM Docket No. 00-10
Television Service	)	MM Docket No. 99-292
	)	RM 9260
	)	
	)	

To: The Commission

REPLY COMMENTS OF COSMOS BROADCASTING CORPORATION

Cosmos Broadcasting Corporation ("Cosmos"), by its attorneys, submits herewith its reply comments in the above-captioned proceeding[1] to implement the Community Broadcasters Protection Act of 1999[2] and to prescribe regulations establishing a Class A television service for qualifying low power television ("LPTV") stations.

In its initial comments, Cosmos urged the Commission to recognize the priority Congress established for full power digital television stations and to protect their ability to replicate their NTSC coverage and maximize their DTV facilities. Congress did not intend to subordinate unconstructed DTV stations to class A licensees. Cosmos asked the Commission to protect pending applicants for new stations and petitions for new DTV allotments. In these reply comments, Cosmos emphasizes the importance of protecting the ability of DTV stations to

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[1] Establishment of a Class A Television Service, *Order and Notice of Proposed Rule Making*, MM Docket Nos. 00-10, 99-292, FCC 00-16 (rel. Jan. 13, 2000) ("*Notice*").

[2] Community Broadcasters Protection Act of 1999, § 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I (*codified at* 47 U.S.C. § 336(f)) ("CBPA").

provide planned service. Cosmos also asks that the Commission refrain from unduly expanding the pool of class A licenses and to ensure that ineligible parties do not obtain class A licenses.

I. CLASS A LICENSING IS A "ONE-TIME-ONLY" OPPORTUNITY

Cosmos agrees with Univision Communications, Inc. ("Univision"), Sinclair Broadcast Group ("Sinclair") and the Association of America's Public Television Stations ("APTS") that the CBPA does not permit the Commission to expand the pool of eligible class A applicants by accepting applications for class A stations on a continuing basis.[3] Congress intended that eligible applicants would have a "one-time-only" opportunity to seek a class A license.

The text of the CBPA is plain: "[L]icensees intending to seek class A designation *shall* submit . . . to the Commission a certification of eligibility" by *January 28, 2000.*[4] Congress directed the Commission to grant class A licenses no later than 60 days after adopting final regulations to those eligible stations that "may" submit applications.[5] The only parties capable of receiving class A licenses after this period are the LPTV stations Congress identified in section 336(f)(6)(A) which currently operate on non-core channels.[6] The CBPA grants no other exceptions to the "one-time-only" licensing and offers no indication that it intended to protect ineligible low power stations which had not been "operated . . . in a manner beneficial to the public good."[7]

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[3] Univision Comments at 8-10; Sinclair Comments at 10-12; APTS Comments at 10-12.

[4] 47 U.S.C. § 336(f)(1)(B) (emphasis added).

[5] 47 U.S.C. § 336(f)(1)(C).

[6] So long as that the party submitted a timely and accurate certification of eligibility. 47 U.S.C. § 336(f)(6)(A).

[7] CBPA, § 5008(b)(1).

Neither the CBPA nor rational policy support the position of the National Religious Broadcasters Association ("NRBA") and USA Broadcasting.[8] They argue that class A eligibility should be on-going and that the Commission should never stop issuing class A licenses.[9] The continuing licensing scheme NRBA and USA Broadcasting proposes, however, would upset the balance that Congress expressly established in the CBPA, and Congress gave the Commission no authority to adopt such a scheme. NRBA and USA Broadcasting, moreover, provide no reasonable basis to support their contention. USA Broadcasting merely cites the CBPA's "stated purposes" of promoting the diversity of the "currently provided" programming and improving financing for existing low power stations.[10] These "stated purposes," however, are directed only at those LPTV stations already providing "valuable programming"[11]– and therefore eligible for class A licenses. USA Broadcasting does not explain how these "stated purposes" apply to ineligible stations.

In the CBPA, Congress always contemplates the protection of existing – not future – LPTV stations. Congress intended to protect existing stations by "buttress[ing] the commercial viability of those LPTV stations which . . . provide valuable programming."[12] Congress acknowledged that "not all LPTV stations can be guaranteed a certain future,"[13] and established

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[8] NRBA Comments at 2-3; USA Broadcasting Comments at 4-6.

[9] USA Broadcasting asks the Commission to continue to grant class A licenses pursuant to the alternative criteria provisions of section 336(f)(2)(B). USA Broadcasting Comments at 5-6.

[10] *Id.* at 6.

[11] Section-by-Section Analysis to S. 1948, known as the "Intellectual Property and Communications Omnibus Reform Act of 1999," as printed in 145 CONG. REC. S14708, S14725 (daily ed. Nov. 17, 1999) ("*Section-by-Section Analysis*").

[12] *Id.*

[13] *Id.*

a retrospective date for qualification to ensure that only certain *then-existing* LPTV stations would receive protection in light of the public interest in the implementation of DTV service.

NRBA and USA Broadcasting never explain why Congress would create such unusual eligibility requirements to protect certain stations providing "valuable programming" only to have them rendered meaningless by such an expansive application of alternative eligibility criteria. This proposed expansion has no support in the statute and overturns Congress' careful balance. Such an absurd result could not have been intended. It would be entirely inconsistent with the CBPA and totally outside of its parameters for the Commission to expand the pool of eligible class A licensees and grant licenses on a continuing basis. Accordingly, the Commission must reject NRBA's and USA Broadcasting's proposal.

II. THE COMMISSION SHOULD VERIFY WHETHER CONVERTED TRANSLATORS HAVE SATISFIED CLASS A ELIGIBILITY CRITERIA.

The Commission has no authority to extend class A protection to translators. The National Translator Association ("NTA") argues that the Commission should expand class A protection to translators which satisfy certain minimum criteria even though they cannot satisfy the locally produced programming requirement.[14] Congress manifestly did not intend for the Commission to expand protection to translators airing duplicative programming. In fact, Congress established in the CBPA a clear requirement that stations had to air locally produced programming to qualify for class A status.[15] The CBPA was intended to buttress only "those LPTV stations which can demonstrate that they provide valuable programming to the

[14] NTA Comments at 2.

[15] 47 U.S.C § 336(f)(2)(A)(i)(II).

community."[16] There is no indication that Congress intended such an expansive interpretation of the discretion it gave the Commission to consider granting translators class A status under alternative eligibility criteria. To the contrary, Congress found that only "a small number of license holders" would gain class A status.[17] If translators should gain class A status, eligible licensees could not be limited to a "small number" by any definition of that term.[18] The Commission must follow Congress' directions and not extend class A protection to translators.

Finally, the Commission should take steps to ensure that those translators that have converted to low power status are truly eligible for class A licenses and have met the programming requirements. As Cosmos urged in its initial comments, the Commission should make certain that stations claiming to be eligible for class A licenses retain evidence in a public file to demonstrate compliance. Congress delineated clear requirements about which stations deserve class A protection. The Commission shoulders a responsibility to viewers, Congress, and legitimate broadcasters to prevent ineligible stations from obtaining class A licenses.

III. CLASS A APPLICATIONS SHOULD BE SUBJECTED TO PETITIONS TO DENY.

Cosmos in its initial comments urged the Commission to take reasonable steps to ensure that parties submitting certification of eligibility in fact met the eligibility criteria. Given the important value of our nation's spectrum, it would be a disservice to the country for the Commission to grant class A licenses to ineligible LPTV stations.

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[16] *Section-by-Section Analysis* at S14725.

[17] CBPA, § 5008(b)(1).

[18] There are almost 5,000 television translators but only 1,616 full power television stations. *Broadcast Station Totals*, 1999 FCC Lexis 6041 (rel. Nov. 22, 1999).

Cosmos supports the contentions of Pappas Telecasting Companies ("Pappas"), the Association of America's Public Television Stations ("APTS"), the Society of Broadcast Engineers ("SBE"), and others to subject class A applications to petitions to deny.[19] Congress intended its criteria to cover "only a small number of license holders," yet over 1,700 LPTV stations apparently have filed certificates of eligibility.[20] Given that the number of LPTV stations claiming class A eligibility so greatly exceeds the number that Congress meant to protect, it is a statistical likelihood a significant number of applications will be technically deficient and that a petition to deny period would provide important protection against impermissible interference that might result. Such a period also would permit interested parties to scrutinize applicants' evidence of eligibility compliance and ensure that ineligible LPTV stations do not gain class A protection.

The Commission, faced with a 30-day statutory processing period for the new service,[21] proposes to grant class A licenses pursuant to a "minor modification" scheme, thereby possibly precluding interested parties from submitting petitions to deny.[22] Nonetheless, to maintain the credibility of its licensing processing, the Commission should subject the applications to petitions to deny. As an initial matter, it is not clear that the Commission is authorized to grant class A licenses under a minor modification scheme given the requirements of Section 307(c).[23] Congress does not indicate in the CBPA that it intended to supersede Section 307's requirements in issuing class A licenses. Accordingly, the Commission may not be authorized to create this

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[19] Pappas Comments at 20; APTS Comments at 15-16; SBE Comments at 5.

[20] *Public Notice*, Statements of Eligibility for Class A Low Power Television Station Status Tendered For Filing (rel. Feb. 8, 2000).

[21] 47 U.S.C. § 336(f)(1)(C).

[22] *Notice* at ¶ 42.

[23] 47 U.S.C. § 307(c).

licensing paradigm. It would not be reasonable for the Commission to reject a petition to deny period on the basis of less than clear authority.

Furthermore, subjecting applications to petitions to deny would assist the Commission – which does not have the resources to authenticate the numerous class A applications. Interested parties could act as vital protectors of the nation's spectrum resources and help prevent ineligible applicants from improperly obtaining class A licenses.

The Commission has thirty days to grant class A licenses to a "*qualifying* low-power television station."[24] If issues are raised in a petition to deny period that cast reasonable doubt about the qualifications of a class A applicant, the Commission is not obliged to grant a license within the thirty day period. Accordingly, the Commission should subject applications for class A licenses to petitions to deny within the parameters of the CBPA.

Moreover, the verification procedures should not end there. The Commission should, as it contemplated in the *Notice*, make certain that an unqualified class A applicant "be denied if a certification of eligibility were later determined to be incorrect."[25] An unqualified class A applicant that somehow survived a petition to deny period should not be able to retain authorization if at some later date evidence surfaces to demonstrate ineligibility.

IV. OFFSET

Cosmos supports the proposal of du Treil, Lundin & Rackley, Inc. ("dLR") to impose offset requirements for class A stations.[26] Not all LPTV stations have a designated offset, but if stations can employ different offsets, a more relaxed D/U interference protection ratio may be

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[24] 47 U.S.C. § 336(f)(1)(C) (*emphasis added*).

[25] *Notice* at ¶ 12.

[26] dLR Comments at 3.

used. Cosmos agrees that reasoned application of offset requirements will minimize interference and optimize spectrum usage.

V. ABILITY TO REPACK

Cosmos agrees with the statements of APTS, Sinclair, and Cordillera Communications ("Cordillera") that the Commission must protect full power stations seeking to revert to their traditional analog channel and maximize after the close of the DTV transition.[27] Cosmos agrees that it would be unreasonable for the Commission to assume that Congress created an elaborate maximization structure only to provide temporary protection for full power digital stations. Congress permits full power stations to return either one of its paired channels after the close of the DTV transition.[28] Congress made plain in the CBPA that class A stations could not harm the ability of existing viewers to continue receiving full power service.[29] Some viewers of full power stations inevitably would lose programming service if a reverting station must accept a reduced digital service area after the transition. Such an outcome is inconsistent with the CBPA. Accordingly, the Commission must preserve the ability of full power stations to revert to their traditional channel and maximize digital facilities.

VI. THE COMMISSION MUST PROTECT PENDING APPLICATIONS.

In its initial comments, Cosmos stated that the Commission should protect pending applications for new stations when authorizing new class A stations.[30] Congress passed the CBPA with the knowledge of the protection the Commission accorded to long-pending full

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[27] Sinclair Comments at 14-17; APTS Comments at 8-9; Cordillera Comments at 5-8.

[28] 47 U.S.C. § 336(c).

[29] 47 U.S.C. § 336(f)(7)(A).

[30] Cosmos Comments at 4-5.

power station applicants and no provision of the CBPA removes that protection. Accordingly, Cosmos supports the similar arguments made by the WB Television Network ("WB"), APTS, and Pappas that the Commission must protect pending new station applications from the facilities proposed in later-filed class A applications.[31]

VII. THE COMMISSION MUST GRANT ANY DTV STATION MODIFICATIONS THAT ACHIEVE REPLICATION.

In the *Notice*, the Commission tentatively concludes that class A stations should be required to protect all full power stations seeking to replicate or maximize but invited comment on whether full power stations had to demonstrate that a proposed DTV station modification was the least burdensome means for achieving desired replication.[32] Cosmos stated in its initial comments that, to the contrary, the Commission should apply broadly the priority Congress granted DTV stations and permit any changes necessary to ensure replication – without regard to class A stations.[33] Cosmos supports the comments of Fox, which states that the protection of full power stations seeking to replicate or maximize "is in no way limited or qualified by the need to resolve technical problems."[34] Sinclair, offering similar comments, maintains that the Commission has no authority to import a "least burdensome means" test into Congress' directions "to ensure replication."[35] Cosmos supports this view as well. Only in these ways will the Commission facilitate a rapid implementation of digital television and quickly recover broadcasters' second channel.

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[31] WB Comments at 12-18; APTS Comments at 6-7; Pappas Comments at 8-14.

[32] *Notice* at ¶¶ 33, 37.

[33] Cosmos Comments at 2-3.

[34] Fox Television Stations, Inc. and Fox Broadcasting Company ("Fox") Comments at 8.

[35] 47 U.S.C. § 336(f)(1)(D)(i).

CONCLUSION

In the CBPA, Congress balanced the interests of full power stations – and the implementation of their digital television plans – with those of low power stations in developing a means to create protections for LPTV stations that had provided "valuable programming." In doing so, Congress manifests a clear priority for full power DTV stations attempting to replicate or maximize facilities. Cosmos urges the Commission to act in accordance with that balance. The Commission has no authority to expand class A eligibility aggressively to include translators or grant class A licenses on a continuing basis. To the contrary, the Commission must ensure that only the "small number" of class A stations are licensed as Congress contemplated and that ineligible LPTV do not obtain licenses improperly. In this manner, the Commission will preserve the ability of DTV stations to commence and provide service as Congress intended.

Respectfully submitted,

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February 22, 2000